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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Plaintiff,

v.)

Case No.: 1:20-cv-00988-JLT-BAM

HYPHY MUSIC, INC.,

Defendant

**DECLARATION OF JOSE
DAVID HERNANDEZ**

1
2 HYPHY MUSIC, INC.,)
3)
4 Counterclaimant,)
5)
6 v.)
7)
8 YELLOWCAKE, INC., COLONIZE)
MEDIA, INC., JOSE DAVID)
9 HERNANDEZ, JESUS CHAVEZ, SR.,)
10 Counterdefendants.)
11
12

13 JOSE DAVID HERNANDEZ, declares under penalty of perjury the following
14 to be true and correct pursuant to 28 U.S.C. § 1746:

15 1. I am a shareholder and President of the Counterdefendant, Colonize Media,
16 Inc. (“Colonize”). As such, I am fully familiar with the facts set forth and circumstances
17 described herein.

18 2. I submit this declaration in support of Yellowcake’s Motion for Summary
19 Judgment pursuant to Federal Rule of Civil Procedure 56.

20 3. Colonize is a global leader in the business of digital music distribution and
21 monetization that digitally distributes, monetizes and administers hundreds of thousands
22 of songs (the recorded performance of those songs hereinafter referred to as “sound
23 recordings”) belonging to its clients.

24 4. Colonize enters into contracts with Record labels and performers to
25 distribute, market and monetize certain sound recordings under its management to digital
26 service provider platforms, such as Spotify, YouTube, iTunes, Apple Music, and
27 Amazon Music (collectively “Retail Platforms”), which then make the sound recordings
28 accessible to consumers.

1 5. One of Colonize's clients, on whose behalf we distribute sound recordings,
2 is Yellowcake, Inc. ("Yellowcake").

3 6. Yellowcake manages and exploits intellectual property rights, including
4 sound recordings of music, and distributes and monetizes some of the sound recordings
5 it owns through Colonize.

6 7. It is my understanding that in about March 2019, Jesus Chavez, Sr., sold the
7 entirety of the rights, title and interest in the copyrights of the sound recordings of six
8 Albums by his band, Los Originales de San Juan: (i) *Los Originales de San Juan- El*
9 *Campesino*; (ii) *Los Originales de San Juan-Corridos de Poca M*; (iii) *Los Originales*
10 *de San Juan-En Vivo Desde La Cantina de Mi Barrio*; (iv) *Los Originales de San Juan-*
11 *Nuestra Historia En Vivo*; (v) *Los Originales de San Juan- Amigos y Contrarios*; and
12 (vi) *Los Originales de San Juan-Naci Con Suerte de Rey Con Mariachi* (hereinafter the
13 "Albums") to Yellowcake pursuant to a written agreement.

14 8. Colonize distributes the Albums through the aforementioned Retail
15 Platforms on Yellowcake's behalf.

16 9. In or about June 2020, Colonize discovered conflicts with certain sound
17 recordings on the Albums being exploited by Hyphy and notified Yellowcake of such
18 conflicts.

19 10. Furthermore, it is my understanding that Hyphy has asserted a claim of
20 copyright infringement against Colonize and Yellowcake alleging that Yellowcake used
21 Hyphy's allegedly copyrighted artwork it created for the Albums when it previously
22 distributed the Albums.

23 11. Nothing could be further from the truth. It is my understanding that
24 Yellowcake never used Hyphy's artwork and that created its own new Album covers
25 after it acquired the sound recordings of the Albums from Chavez. Colonize never
26 distributed the Albums using Hyphy's artwork.

27 12. It is my understanding that Hyphy is supporting its allegation maintaining
28 that Yellowcake and Colonize have distributed copies of the Albums using Hyphy's

1 artwork on an online music store named Daddy Kool Records.

2 13. However, Daddy Kool Records has never been an account of or associated
3 with Colonize, and Colonize has never distributed any sound recordings through Daddy
4 Kool Records, let alone the Albums with Hyphy's artwork.

5 14. *I have reviewed the alleged screenshots relied on by Hyphy and the*
6 *screenshots do not mention or identify either Yellowcake or Colonize in any way.*

7 15. In fact, after I became aware of the allegation that Yellowcake and Colonize
8 had allegedly distributed artwork through Daddy Kool Records, Colonize investigated
9 the allegation. Not only did I confirm that Colonize did not upload or distribute the
10 Albums using Hyphy's artwork through Daddy Kool Records, it never distributed
11 anything through Daddy Kool Records at all. *Yellowcake also discovered that in fact it*
12 *was Hyphy Music, in corroboration with Morena Music, Inc. doing business as Long*
13 *Play Music, who uploaded the albums to Daddy Kool Records, through its distributor,*
14 *The Orchard, and is now attempting to pass off such acts as being attributed to*
15 *Yellowcake.*

16 16. Colonize discovered that Daddy Kool Records received the Albums, with
17 Hyphy's artwork, from Morena, through Hyphy and Morena's distributor, The Orchard.

18 17. Attached hereto as **Exhibit "A"** is an email chain between Colonize and one
19 of Daddy Kool Records' digital distributors, Audible Magic, who acknowledged that it
20 had acquired the Albums with Hyphy's artwork from The Orchard, who in turn received
21 them from Morena d/b/a Long Play Music, and uploaded the albums and artwork to
22 Daddy Kool Records. This is definitive and objective proof that it was not Yellowcake
23 or Colonize who gave the Albums to Daddy Kool Records, but in fact Morena who
24 provided the albums.

25 18. Furthermore, it is my understanding that Hyphy did not produce these alleged
26 screenshots of its album artwork on Daddy Kool Records website until October 2022,
27 almost two years after the commencement of litigation and only on the eve of the first
28 deadline to file summary judgment motions. This supports the obvious inference that

Hyphy manufactured this “evidence” which is consistent with Hyphy’s prior actions of manufacturing evidence such as the alleged assignment agreements from Chavez’s former backing musicians.

19. Furthermore, Colonize's attorneys advise me that Hyphy's screenshots are unsubstantiated and lack a foundation. Hyphy has provided no evidence of who actually uploaded the Albums to Daddy Kool Records or when they were uploaded, let alone any proof it was Colonize or Yellowcake, because it was neither of them. Most tellingly, the screenshots themselves make no mention of either Colonize or Yellowcake and that Hyphy's attempt to use the screenshots as evidence of Colonize and Yellowcake's acts when they were uploaded by Morena, is a fraud on the Court.

20. For all of the foregoing reasons, it is respectfully requested that this Court grant both Colonize's and Yellowcake's motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 on Hyphy's second counterclaim for copyright infringement, as well as grant such other and further relief as the Court may deem just and proper.

Dated: July 13, 2023

Respectfully submitted:

JOSE DAVID HERNANDEZ
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